

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO**

**IN RE:
MANUEL ANTONIO DOMENECH RODRIGUEZ
DEBTOR**

**WIGBERTO LUGO MENDER, TRUSTEE FOR
THE ESTATE OF MANUEL ANTONIO DOMENECH
RODRIGUEZ
PLAINTIFF**

v.

**RUTH E. RODRIGUEZ BORGES
DEFENDANT**

CASE No. 10-05835 (BKT)

CHAPTER 7

ADV. NO. 11-00168 (BKT)

**COMPLAINT TO OBTAIN THE
TURNOVER OF PROPERTY
OF THE ESTATE**

**MOTION REQUESTING IMMEDIATE DISQUALIFICATION OF DEFENDANT'S
LEGAL REPRESENTATION**

TO THE HONORABLE COURT:

COMES NOW, Wigberto Lugo Mender, Esq., duly appointed Chapter 7 Trustee for the Estate of the Debtor Manuel A. Domenech Rodríguez, through the undersigned attorneys, herein **STATES** and **PRAYS** as follows:

I. PROCEDURAL BACKGROUND

1. Debtor Manuel A. Domenech Rodríguez filed a voluntary petition for bankruptcy under Chapter 7 of the Bankruptcy Code with this Honorable Court on June 20th 2010, 11 U.S.C.A. §701, et. seq. [Docket 1, Case No. 10-05835].
2. Subsequently, hereby Plaintiff Wigberto Lugo Mender, Esq. was appointed Chapter 7 trustee for the present case on July 1st 2010. [Docket 5, Case No. 10-05835].
3. A review of the bankruptcy petition schedules and documentation provided to the trustee revealed a significant debt still pending and owed by Mrs. Ruth E. Rodríguez

Borges to Debtor Manuel A. Domenech Rodríguez' estate for the total sum of **two hundred five thousand dollars (\$205,000.00)**. The source of this debt is the liquidation settlement agreement, as subscribed by the debtor and his ex-wife subsequent to their divorce and recorded on Public Deed No. 303 before Notary Public Luis A. Arrufat Pimentel on November 25th 2002, "*Liquidación de Gananciales, Adjudicación y Modificación de Hipoteca*".

4. On August 10th 2011, pursuing the collection of monies owed to the bankruptcy estate, hereby trustee Wigberto Lugo Mender, Esq. filed the present Adversary Complaint against Ruth E. Rodríguez Borges with this Honorable Court [Docket 1, Adv. No.11-00168].
5. On August 18, 2011, Counselor Luis A. Melendez-Albizu appeared before this Honorable Court, representing defendant Ruth E. Rodriguez Borges. He requested an extension of time to plead [Docket 7, Adv. No.11-00168].
6. On September 9th 2011, Counselor Luis A. Melendez-Albizu again appeared representing defendant Ruth E. Rodriguez Borges and filed a Motion to Dismiss [Docket 10, Adv. Case No. 11-00168].
7. Hereby plaintiff and Chapter 7 trustee Wigberto Lugo Mender, Esq., has opposed the defendant's Motion to Dismiss [Docket 14, Adv. Case No. 11-00168].

II. THE CONFLICT

8. Counselor Luis A. Melendez-Albizu has appeared as the legal representative of defendant Ruth E. Rodriguez Borges in the present adversary case [Dockets 10 & 14, Adv. Case No. 11-00168].
9. Counselor Luis A. Melendez-Albizu has also appeared as the legal representative of Ruth E. Rodriguez Borges representing her minor daughter A.G.D.R. in a separate Adversary Proceeding to collect, enforce and obtain a declaration of non-discharge of a claimed domestic support obligation against the estate of Manuel A. Domenech Rodríguez [Main case 10-05835, Claim 1, Adv. Case No. 10-00144].
10. Adversary Proceeding No. 10-00144 was dismissed by this Honorable Court [Dockets

35 & 40], but is now under appellate proceedings before the United States District Court for the District of Puerto Rico Case No. 11-1853 JAG.

11. Counselor Luis A. Melendez-Albizu represents minor A.G.D.R., who is an alleged creditor, owed \$80,700.00 from the bankruptcy estate. At the same time Counselor Melendez-Albizu is representing defendant Ruth E. Rodriguez Borges who owes money to the same bankruptcy estate in the amount of \$205,000.00.
12. These two distinct legal representations are in conflict with each other since a successful defense in the collection of money adversary against defendant Ruth E. Rodriguez Borges will severely limit the ability of minor A.G.D.R. to collect her DSO claim, all from the same bankruptcy estate.

III. LEGAL ANALYSIS

13. The United States District Court for the District of Puerto Rico, by way of Local Rule 83E (a) of the “*United States District Court for the District of Puerto Rico, Local Rules*”, adopts the Rules of Professional Conduct of the American Bar Association, to govern the conduct of attorneys admitted to practice before this court.
14. That a motion to disqualify is a proper method for an attorney to comply with his obligation to report ethical violations, including potential conflicts of interest, by other members of the bar. Kevlik v. Goldstein, 724 F.2d 844, 848 (1st Cir. 1984); Hill v. Culebra Conservation & Dev. Auth., 599 F. Supp. 2d 88 (D.C.P.R. 1984).
15. That a District Court is vested with broad power and responsibility to supervise the professional conduct of the attorneys appearing before it. Kevlik v. Goldstein, 724 F.2d 844, 848 (1st Cir. 1984).
16. That Rule 1.7 of the American Bar Association “*Model Rules of Professional Conduct*” proscribes that a lawyer shall not represent a client, if said representation involves a concurrent conflict of interest. Among the possible scenarios that involves a conflict of interests there are; “*the representation of one client will be directly adverse to another client; or there is a significant risk that the representation of one or more clients will be*

materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer." Rule 1.7 (a) (1) (2) of the American Bar Association "*Model Rules of Professional Conduct*".

17. That the "*Canons of Professional Ethics of 1970*" of Puerto Rico also proscribe that a lawyer represents a client if said representation involves a concurrent conflict of interest.

"The lawyer has the obligation to represent his client with complete loyalty. This duty includes the obligation to disclose to the client all the circumstances of his relations to the parties and to third persons, and any interest in the controversy which might influence the client in the selection of counsel. No lawyer should accept employment when his professional judgment might be affected by his personal interests. It is unprofessional to represent conflicting interests. Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose. The obligation to represent the client with fidelity includes not divulging his secrets or confidences and to adopt adequate measures to avoid disclosure thereof. A lawyer should not accept the representation of a client in matters adversely affecting any interest of a former client, nor should he be an arbitrator, especially when the former client has made him confidences which may affect one or the other client, even though both clients consent thereto. It will be highly improper for a lawyer to use the confidences of a client to the latter's prejudice. ...When a lawyer represents a client by recommendation of another person or group who pays the lawyer for said service, he should withdraw from the representation of both as soon as a situation of conflicting interests arises between the person or group who pays his fees and the person whom he represents." Canon 21 of the "*Canons of Professional Ethics of 1970, as amended in 1980*" of Puerto Rico. (Citation Omitted). (Emphasis supplied).

18. Counselor Luis A. Melendez-Albizu represents minor A.G.D.R., an alleged creditor, owed \$80,700.00 from the bankruptcy estate. At the same time Counselor Melendez-Albizu is representing defendant Ruth E. Rodriguez Borges who owes money to the same bankruptcy estate in the amount of \$205,000.00.

19. The interests of both of Counselor Melendez-Albizu's clients are in conflict with each other since minor A.G.D.R. is attempting to collect from the bankruptcy estate and defendant Ruth E. Rodriguez Borges is trying to avoid paying her debt to the same estate.
20. It is important to note that the collection of the money owed by defendant Rodriguez Borges to the bankruptcy estate will probably be the most significant recovery of money that will allow for any distribution to the estate's creditors.
21. Therefore, due to the foregoing, the plaintiff respectfully requests from this Honorable Court, to GRANT the present motion, immediately disqualifying defendants' attorney Luis A. Melendez-Albizu Esq. from the legal representations of defendant Ruth E. Rodriguez Borges and creditor minor A.G.D.R. represented by her mother Ruth E. Rodriguez Borges.

WHEREFORE, the plaintiff respectfully requests this Honorable Court, to take notice of the above, **GRANT** the present motion immediately, disqualifying defendants' attorney Luis A. Melendez-Albizu Esq. from the legal representations of defendant Ruth E. Rodriguez Borges and creditor minor A.G.D.R. represented by her mother Ruth E. Rodriguez Borges, or to provide any other remedy it deems necessary in equity or law.

I HEREBY CERTIFY that on this same date a copy of this motion was filed with the Clerk of Bankruptcy Court using CM/ECF system which will serve a copy of the same to all parties interested including: LUIS A MELENDEZ ALBIZU on behalf of Plaintiff RUTH RODRIGUEZ BORGES lamelendez@prtc.net, MelendezAlbizuLaw@gmail.com.

I HEREBY ALSO CERTIFY that on this same date a copy of this motion was filed on Bankruptcy Appeal Case No. 11-01853 (JAG) with the Clerk of the Federal District Court of Puerto Rico using CM/ECF system which will serve a copy of the same to all parties interested including: EMILY D. DAVILA-RIVERA princessda@prtc.net, treasure@prtc.net; LUIS A. MELENDEZ-ALBIZU lamelendez@prtc.net, MelendezAlbizuLaw@gmail.com; MONSITA LECAROS-ARRIBAS

MOTION REQUESTING IMMEDIATE DISQUALIFICATION
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monsita.lecaroz@usdoj.gov; NANCY PUJALS nancy.pujals@usdoj.gov; WIGBERTO LUGO-MENDER
wlugo@lugomender.com.

I FURTHER CERTIFY THAT: On this same date copy of this motion has been sent via regular mail to: *US Trustee Office* at Ochoa Building, 500 Tanca Street, Suite 301, Old San Juan, Puerto Rico 00901-1922; to Debtor **Manuel A. Domenech Rodrifuez** at Condominio El Paraiso, Apt. 14-D, #1560 calle Paraná, San Juan, P.R. 00926 and to Debtor **Attorney Emily D. Davila** at 420 Ponce de Leon Midtown Bldg. Suite 311, San Juan, P.R. 00918.

RESPECTFULLY SUBMITTED,

In San Juan, Puerto Rico this November 8, 2011.

ATTORNEYS FOR THE TRUSTEE

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